UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 410 (UNITED STATES POSTAL SERVICE) and

Case 25-CB-8924

PATRICIA BIGHAM, an Individual

Rebekah Ramirez, Esq., for the General Counsel. Oriana Vigliotti, Esq. (Cohen, Weiss & Simon LLP), of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in Evansville, Indiana, on April 27, 2006. The charge was filed on October 17 and amended on October 19, 2005,¹ and the complaint was issued January 30, 2006. The complaint alleges that the National Association of Letter Carriers, Branch 410 (the Respondent or Union), violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act), by threatening unit member Patricia Bigham with refusing to file a grievance on her behalf unless she became a union member, coercing her into becoming a union member, withdrawing a grievance concerning her because she refused to join the Respondent and because she complained to the National Association of Letter Carriers (NALC), and threatened her with having to reimburse the Respondent for legal expenses because she filed an unfair labor practice charge.

On the entire record, including my observation of the demeanor of the witnesses, my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole and, after considering the briefs filed by the parties,² I make the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (USPS) provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including its facility in Henderson, Kentucky, the only facility involved in this proceeding. The National Labor Relations Board (the Board) has jurisdiction over the USPS and this matter pursuant to Section 1209 of the Postal Reorganization Act. The Respondent, National

¹ All dates are in 2005 unless otherwise indicated.

² The General Counsel's unopposed motion to correct the transcript is granted.

Association of Letter Carriers, Branch 410, is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEDGED UNFAIR LABOR PRACTICES

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A. Introduction

Paragraph 5 of the complaint alleges that the Respondent is the exclusive bargaining representative of certain employees of the USPS. The record establishes that the Respondent more accurately is described as the local affiliate of the Section 9(a) representative, the NALC. The USPS has recognized the NALC as the exclusive bargaining representative of the employees in the following unit which the Respondent stipulates, and I find, is appropriate for collective bargaining:

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All city letter carriers at the Employer's Henderson, Kentucky facility: BUT EXCLUDING all managerial and supervisory personnel, professional employees, employees engaged in personnel work other than a purely non-confidential clerical capacity, security guards, Postal Inspection Service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

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There are approximately 26 letter carriers in the unit and only 2 not union members. Charging Party, Patricia Bigham, is a member.

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At all material times the NALC and the USPS have maintained and enforced a collective-bargaining agreement covering conditions of employment of the unit employees and containing a multistep grievance and arbitration procedure. The initial step of the grievance procedure, informal step A, is usually an informal meeting between the union steward and the immediate USPS supervisor involved with the grievance. The grievant may or may not attend. If the grievance is not resolved it is moved to formal step A, that is a meeting between the branch chief steward and the branch postmaster. If they cannot resolve the grievance it is referred to the dispute resolution team (DTR), also known as the B team. The DTR consists of a representative appointed by the USPS and a representative appointed by the NALC. The resolution of the grievance by the DTR team is final and binding and from which no appeal can be taken. If the DTR team cannot resolve the grievance, the team may declare impasse. The grievance is then sent to NALC Business Agent Pat Carroll and his USPS counterpart who decide if the grievance should go to arbitration.

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Ernie Kirkland is the assistant NALC business agent. He and Carroll are located in Troy, Michigan. Neither appeared at the hearing.

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Robert E. Gibson is the Respondent's president and chief steward and has been for the previous 7 years. As the Chief Steward he meets with the postmaster at the formal step A meeting set forth in the grievance procedure. Frank Ditterline has served as the Respondent's steward for the last 2 years and Jack Buckman has been the Respondent's treasurer for the past 4 years. The foregoing elected representatives are full-time letter carriers and all serve the bargaining unit members without pay. Gibson and Ditterline frequently attend State and national union training seminars specifically addressing issues surrounding the filing of a grievance and the duty of fair representation.

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Membership in the Union is voluntary and letter carriers are eligible to join after completion of a 90–day probationary period. In order to join, an employees must sign a union

dues-authorization form and return it to a union representative.

Bigham began employment at the Henderson Branch Post Office in 1986. For a period of time between 1990 and 1993, Bigham was the Respondent's president. She also erroneously believed that she was a member of the Union, a prerequisite to holding a union office. This error was discovered when Bigham attempted to vote at a NALC National Convention. Although she was prevented from voting, and resigned as the Respondent's president, she did not join the Respondent until sometime in 1995. She resigned her membership in April 2004.

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B. The General Counsel's Case

The counsel for the General Counsel acknowledges that the following alleged incident occurred before the 6-month "statue of limitations" set forth in Section 10(b) of the Act (which prevents complaint allegations that occurred more than 6 months before the charge) and are offered solely as background evidence to shed light on the unlawful conduct alleged in the complaint.

Bigham was hired as a city letter carrier, but do to an injury in 1999, she was placed on a limited duty assignment. On March 18, 2005, the USPS offered Bigham a new limited duty job as a clerk, effective April 1. Bigham accepted, under protest. The new job changed her days off from rotating days, that allowed her to have a 3-day weekend every 6 weeks, to fixed days of Wednesday and Sunday, thereby preventing her from having consecutive days off.

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Bigham stated that around April 1 she requested that Gibson file a grievance because she wanted to continue holding a letter carrier job in order to maintain her rotating days off schedule. She claims that Gibson said that he would see what the Union could do about the matter and gave Bigham a dues-authorization form to sign. Bigham stated that Gibson told her that she needed to sign the form because "she was not a union member" and that the Union "could not represent her fairly without being a union member." Bigham signed the form, dated it April 1, 2005, and returned it to Gibson. She also told Gibson that it was the law that the Union had to represent her whether or not she was a member. Gibson responded, according to Bigham, that he was the judge and the jury and that he decided what grievance could be filed and that she did not have a grievance. Gibson put the dues-authorization form in his locker.

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About 45 minutes later Bigham went to Gibson and asked if he was going to file the grievance. When he replied in the negative she requested, and received, her dues authorization form. She contends that General Counsel Exhibit 2 is her original dues authorization form. Bigham testified that she spoke about this incident with letter carriers Kevin McCardel, Leo Speaks, and Greg Pixley. When asked on direct examination specifically what she told Pixley she replied, "I told him that I had signed the union papers and that Robert was not going to file a grievance for me and that I had asked to have my papers given back to me" (Tr. 31).

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Bigham testified that as soon as she received the offer from the USPS, somewhere around March 18, she began calling NALC Business Agent Carroll in Troy, Michigan, because Gibson was "not wanting to help me out" (Tr. 32–35). Bigham testified that during the morning of April 11 she had a 10-minute phone conversation with Ernie Kirkland, the assistant NALC business agent. The outcome of the conversation, according to Bigham, was that Kirkland agreed that she had a grievance and said that he would contact Gibson. Although there is no evidence that Kirkland did contact Gibson about this matter, grievance number 0505, concerning the job offer, was filed by Ditterline, on April 11 (Jt. Exh. 2 at 4). Gibson and Regina

Edmonds, the Henderson Postmaster could not resolve the grievance and the Respondent appealed the grievance to step B, the DTR team.

The DTR team found the grievance without merit on June 22. In its decision the DTR team specifically found that the limited duty job offer "with Non-Scheduled days of Sunday/Wednesday, work hours of 0800-1650, and a description of the duties of the modified assignment" was proper in light of Bigham's medical restrictions and that the USPS had not violated the collective-bargaining agreement.

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The Complaint Allegations

The complaint alleges, in part, that the Respondent threatened Bigham with refusing to file a grievance on her behalf unless she became a union member, coerced her to become a union member, and withdrew her grievance in retaliation for her previous refusal to join the Respondent and because she complained to the NALC.

In support of the foregoing allegation Bigham testified that after receiving the DTR team decision denying grievance 0505 she went to Gibson and requested that another grievance be filed contending that because the DRT specifically found that her new position "is a Modified Carrier Position with clerk duties assigned" (Jt. Exh. 2 at 3), she was still entitled to have rotating days off. Gibson refused, stating that she did not have a case.

Bigham testified that as soon as she arrived at work on the morning of June 27, Gibson told her that Ditterline, the Respondent's steward, needed to see her. Later that morning, as she was walking across the workroom floor Ditterline stopped her. According to Bigham, Ditterline held a dues-authorization form and told her that he would like to file the grievance but that she needed to join the Union. Bigham contends that Ditterline admitted forcing her to join the Union in order for him to file the grievance. She claims that she told him "well, you know, you have to represent me no matter what but since you are going to force me, I will sign it because I knew they would not file a grievance, probably (Tr. 43)." Bigham signed and dated the dues-authorization form and returned it to Ditterline, who she observed delivering it to Gibson. She thereafter "said something to another carrier" (Tr. 44).

On July 2, the Respondent filed grievance 0509, concerning the rotating days off. On July 8 Gibson and Postmaster Edmonds met to discuss the grievance. In an attempt to resolve it they made a joint conference call to the DTR team that had denied grievance 0505. They specifically asked the team if the days off issue was considered when the team decided grievance 0505. The DTR team said that it was, and that they concluded that the USPS's action was proper. Based on that information, Gibson withdrew the grievance and drafted a memo to the file explaining his reasons.

On learning that the grievance was withdrawn Bigham confronted Gibson. After hearing Gibson's explanation, Bigham was still not satisfied and again called the NALC business agents as well as the DTR team in Indianapolis, Indiana.

Gibson testified that Carroll called him and said that Jimmy Williams, executive vice president of the NALC, had told him that Bigham had threatened a lawsuit. Carroll said that in Williams' view "a grievance is cheaper than a lawsuit." Carroll then asked Gibson, as a favor, to refile the grievance. Grievance 0510, filed on July 14, is essentially the same as grievance 0509. A different DTR team declared impasse (Jt. Exh. 5) and the grievance was moved to arbitration. The arbitrator determined that the grievance was not arbitrable because the issue was previously decided in the DTR team's resolution of grievance 0505.

On October 17 Bigham filed the unfair labor practice charge against the Respondent. Thereafter, Bigham attended the Respondent's October meeting membership. Gibson announced to the membership, under the "new business" agenda, that an unfair labor practice charge had been filed against the Respondent. In response to a question, Gibson identified Bigham as the Charging Party. The question of the need to hire an attorney was asked. Gibson said that although he thought that was likely because he had no experience with the Board, he would have to check on it. Jack Buckman, the Respondent's treasurer, testified that he asked that if the Respondent won the case, if it could be reimbursed for the lawyer's cost. According to Bigham, Gibson responded that he did not see why Bigham could not be held for the fees, to which she responded that she was not paying them. Bigham contends that it was only after the foregoing exchange that Gibson said that he would have to ask the NALC.

Based on the foregoing, paragraph 5(h) of the complaint alleges that the Respondent threatened Bigham with having to reimburse the Respondent for its legal expenses because she employees filed an unfair labor practice charge.

III. DISCUSSION

Section 8(b)(1)(A) of the Act prohibits a union from restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act. Section 7 guarantees employees the right to join or to refrain from joining labor organizations. Section 8(b)(1)(A)) does not require motivation or intent to establish a violation. E.g., *Boilermakers Local 686 (Boiler Tube Co.)*, 267 NLRB 1056, 1057 (1983).

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A union's status as the exclusive representative of the bargaining unit members imposes on it a statutory duty to represent the interests of its members without hostility or discrimination. That statutory duty is violated when the union's representational conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). A union violates Section 8(b)(1)(A) of the Act when, in processing contract grievances, it discriminates against unit employees who are not members of the union. E.g., *Auto Workers (Ford Motor Co.)*, 325 NLRB 530 (1998), enfd. 168 F.3d 509 (D.C. Cir. 1999). Nevertheless, "[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

Based on the foregoing, it is obvious that if Bigham's testimony is credible, regarding Gibson's and Ditterline's comments concerning her need to join the Respondent before they would file a grievance on her behalf, the Respondent has violated Section 8(b)(1)(A) of the Act. The Respondent acknowledges this fact by characterizing the case as a "classic credibility dispute." I agree, and because Bigham's testimony is the entire corpus of the General Counsel's case I have made a careful evaluation of the reliability of her accounts, both standing alone and when weighted in juxtaposition to the contrary accounts and the categorical denials of the Respondent's witnesses. I generally did not find her demeanor to be that of a candid witness, who was testifying without rancor, especially when comparing her testimony to that of the Respondent's witnesses. In addition to her demeanor, for the reasons set forth below, I also find that her testimony suffers from a lack of corroboration, and is implausible and improbable.

Gibson admitted that as a union official he has a professional relationship with Bigham, but he also volunteered that beyond work he has no relationship with Bigham. Based on his demeanor when making that statement it is also clear that he wanted none. He testified that "[s]he does not seem to like me very much and, sometimes, the feeling is mutual. Gibson has

known Bigham for 11 years. Gibson testified that she telephones the NALAC business agents to complain about his actions regarding all of her grievances. Gibson opined that he thought that Bigham had "some issues about control." He testified that Bigham is unable to accept that the grievance procedure requires that once a grievance progresses beyond the initial level it becomes the Union's grievance. As such he, as the chief union steward, has the authority and the responsibility to settle the grievance even in a manner that is not satisfactory to the grievant. Gibson's assessment is based on his undisputed testimony that during his tenure as president the Respondent has filed approximately 22 grievances on Bigham's behalf, when she has been both a member and a nonmember of the Respondent.

Bigham, who does not dispute Gibson's assertions, contends only that in previous dealings Gibson would ignore or laugh at her requests.

When testifying about Bigham, Gibson's demeanor was neither aggressive nor hostile. He appeared resigned to the situation between himself and Bigham, and he testified in a calm, noncombative manner. I find him to be a trustworthy and forthright witness.

Regarding Bigham request for the dues-authorization form in April 2005 Gibson only acknowledges that Bigham approached him about rejoining the Union. Gibson testified that he got the form from his locker, signed it, handed it to Bigham, and that he never saw the form again. Assuming that General Counsel Exhibit 2 is the form Gibson signed, Bigham's testimony is still puzzling. She acknowledged her signature, and that she dated the form April 1, and that General Counsel Exhibit 2 is the original form. She also testified that she retrieved the form from Gibson approximately 45 minutes later. Bigham offers no explanation, or even acknowledgement, that the date after what appears to be Gibson's signature, is April 4 is also the date in the block indicating that the form was delivered to the USPS on that day. Although not of major significance, it is of interest because Gibson denies ever again seeing the form he signed and gave to Bigham. This denial presumably encompasses General Counsel's Exhibit 2.

In any case Gibson's alleged statement that Bigham had to become a member for the Respondent to represent her fairly appears to be the primary purpose for which the background evidence is being offered. This statement was allegedly made after Gibson told Bigham that she did not have a grievance (Tr. 27–28). Assuming Gibson wanted Bigham to join the Respondent it appears contradictory for him to begin his coercion by stating that he does not believe that she has a meritorious grievance. In essence Bigham's testimony is that Gibson told her that she had to rejoin the Respondent, in order to find out for certain that her grievance had no merit. Notwithstanding Bigham's telling Gibson that his statement is unlawful, she signs the dues-authorization form. Forty-five minutes later Bigham asks Gibson if he is going to file her grievance. After he refuses, she requests the return of her dues-authorization form, the very form that she alleges Gibson had only just coerced her into signing. Gibson immediately complies with her request, without comment. I find that this story lacks the proverbial "ring of truth." I do not accept the General Counsel's offer of background evidence in light of Gibson's credible denial and the history of conflict between he and Bigham.

Bigham also admits that she was calling the NALC business agents since March 18 about "everything that was coming up effecting me" and Gibson not wanting to help her. Gibson did not specifically deny Bigham's testimony that he thought her grievance was without merit and he most certainly was aware that Bigham was calling the NALC business agents—he testified that she called them about all her grievances. Based on this undisputed history of conflict, I find it difficult to accept that Gibson would be so bold, and so foolish, as to make such a blatantly coercive statement to Bigham, herself a former union president. I am equally troubled by Bigham's failure to take any action with either the Board or the NALC business

agents, based on her acknowledged understanding that Gibson's alleged statement was unlawful. It appears that throughout this period all Bigham's communications with the NALC business agents were limited to soliciting their support in getting Gibson to file a grievance that he did not believe had merit. I also observed that Bigham's demeanor is not that of an individual who is easily intimidated, or deterred. I find it incredible that Gibson would think that he could threaten or coerce Bigham into doing that which she did not want.

Bigham also testified that she talked to McCardel, Speaks and Pixley about the incident. Bigham testified that she told Pixley that, "I had signed the union papers and that [Gibson] was not going to file a grievance for me and that I had asked, to have my papers given back to me" (Tr. 31). Pixley testified, but as will be seen, his testimony was directed at the Ditterline incident entirely, and he in no way corroborates Bigham's testimony concerning Gibson's alleged coercive statement. I find that the lack of corroboration of Bigham's version of events also detracts from her credibility

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In any case, Bigham remains a nonmember, her grievance is filed, Gibson and the Postmaster cannot resolve the grievance, Gibson moves it to the DTR team and they find that it is without merit. Bigham claims that thereafter on June 27 Ditterline told her that he would refile the grievance if she becomes a union member. As of June 27, Bigham had talked to Gibson about filing another grievance specifically concerning the "rotating days off" issue and he had told her "a couple of times" that she "did not have a case" (Tr. 40). Thus, according to Bigham, while Gibson, the chief steward, is telling her she has no case, Ditterline, the steward, is assuring her "that he would like to file that grievance but, you know, I wasn't a union member and that I needed to join the union" (Tr.41). Once again Bigham states that she confronts the union representative—"you know, you have to represent me no matter what"—only to immediately succumb to the unlawful coercion—"since you are going to force me I will sign it." Bigham offers as a reason for her action that, "I knew they would not file a grievance, probably." (Tr. 43.) Bigham's thinking is especially confusing because Gibson had just filed a grievance on her behalf, and moved it all the way forward to the DTR team for resolution, all while Bigham was not a member. Ditterline filed the grievance on July 2. Gibson testified that the grievance was refiled because Bigham wanted it refiled because she felt that the initial finding concerning her days off by the DTR team was erroneous, and that the refiling had nothing to do with her membership. On July 8, after Gibson and Postmaster Edmonds held a joint conference call with the DTR team, Gibson withdrew the grievance. His decision was based on the DTR team's acknowledgement that the days off issue had been considered as part of their decision.

Gibson testified that as the result of a telephone conversation with National Business Agent Carroll, the Respondent, refiled the grievance on July 14. Carroll told Gibson that Bigham had called Jimmy Williams, NALC executive vice president, and had threatened a lawsuit. Carroll said that in Williams' view "a grievance is cheaper than a lawsuit." Carroll then asked Gibson, as a favor, to refile the grievance. Grievance 0510, filed on July 14, is essentially the same as grievance 0509, that was withdrawn by Gibson. A different DTR team declared impasse (Jt. Exh. 5) and the grievance was moved to arbitration. The arbitrator determined that the grievance was not arbitrable because the issue was previously decided in the DTR team's resolution of grievance 0505.

Ditterline's entire 7-year employment with the USPS has been at the Henderson Post Office. He has been a union member for 5 years and a steward for 2 years. He has attended three training courses conducted by the NALC on the processing of grievances. Ditterline credibly testified that on June 27 he was approached by Bigham while he was working. Bigham said that she wanted to rejoin the Union. Ditterline testified that he obtained a dues-

authorization form from a file cabinet, had Bigham sign it, and immediately took the form to

Gibson. He acknowledged that he might have said "thank you" after Bigham gave him the form. He specifically denied telling Bigham that she, or anyone else had to be a union member for him to file their grievance, or threatening Bigham, or anyone else, with not filing a grievance for them until they joined the union.

Ditterline's demeanor was that of an honest and truthful witnesses. Neither his demeanor nor the evidence gives any indication that he is, or perceives himself to be, Gibson's lackey. He acknowledged the conflict between Gibson and Bigham, but he did not appear to harbor any hostility towards Bigham, and none is argued by the counsel for the General Counsel.

It is obvious from Ditterline's testimony that he is reluctant to engage in a dialogue with Bigham. Counsel for the General Counsel contends that both Gibson's and Ditterline's testimony is "suspiciously identical," and implausible, because neither inquired of Bigham why she wanted to rejoin the Union. In response to that question they both answered that it was none of their business. Unlike the counsel for the General Counsel, I find nothing suspect in their statements. There is no question that Bigham had a right to join the Respondent and, considering her adversarial relationship with Gibson, it is conceivable that she may have viewed any such inquiry as an attempt to obstruct her path to membership. I also find that Gibson's and Ditterline's lack of interest is consistent with their demeanor when testifying about Bigham. Neither exhibited overt hostility or aggressiveness towards her, but it was clear that they only interact with her in their official union capacity, and only then to the extent that is absolutely necessary.

Not only does Bigham have a history of joining and resigning from the Union, but by the brevity of her testimony concerning that history, it appears that she has no compelling urge to expound on the reasons for her actions. Thus, she was eligible for membership in the Respondent in 1986, and although not a member she was elected president of the Respondent for a period of time during the early nineties. It was while attempting to vote at the NALC convention that she discovered that she was not a member. Notwithstanding being informed that she was mistaken about her membership in the Union, she did not join until 1995, and she resigned in 2004. I see no reason for Bigham to explain why she was exercising her right of association, nor do I find anything implausible in Gibson and Ditterline not asking her why she wished to rejoin—it really is none of their business.

Greg Pixley was subpoenaed by counsel for the General Counsel as a corroborating witness for Bigham. Pixley is a letter carrier at the Henderson facility, and at times he works beside her. Pixley was a member of the Respondent from 1995 until he resigned in 2001 or 2002. Until Bigham rejoined in 2005, she and he were the only nonmembers. Notwithstanding the fact that he was not a member, I found him to be a very credible witness who did not appear to have a bias towards either party and was making a sincere effort to recount the events as best he could.

Counsel for the General Counsel prefaced her question by directing Pixley's attention to April 2005, and then asked him about a conversation he had with Bigham. Over the Respondent's hearsay objection I allowed his testimony. Pixley stated that Bigham came to him and asked if he had heard what Ditterline had told her. Pixley said that he had not because he is usually wearing earphones and is too busy working to pay attention to his surroundings. Bigham told him that Ditterline had given her papers to sign to rejoin the union. Bigham said that Ditterline told her that if she rejoined that they would give her better representation than she had at that moment. Pixley replied that he was "kind of surprised that—that they were going to do something like that" (Tr. 142). Bigham indicated that she was undecided and mentioned that

she would seek advice from the district or regional offices as to the direction to take.

Clearly Pixley's testimony, although credible, has no probative value regarding either the April 2005 alleged incident with Gibson, or the June 27 incident with Ditterline. Although Bigham mentioned Pixley as one of several carriers to whom she told about the Gibson incident, she testified that she told Pixley that she had signed the papers, that Gibson was not going to file the grievance and that she had asked to have the papers returned (Tr. 31). Pixley's testimony in no way relates to that scenario. His testimony apparently relates to the Ditterline incident. Presumably it is he to whom Bigham is referring when she testified that she said something to another carrier (Tr. 44). Of course Pixley's testimony regarding what he was told by Bigham is not only significantly different from her testimony, it is based not at all on what he heard or observed, but solely on what Bigham told him, and therefore is of no probative value.

I do find Pixley's testimony significant for his response that he was surprised that "they" were doing something like that. I agree. Neither Gibson nor Ditterline appeared to have the demeanor of vindictive individuals. Pixley testified that the Respondent has filed and prosecuted grievances both at his request, and when the Respondent acted on its own, believing that Pixley's rights under the collective-bargaining agreement had been violated. It is undisputed that the Respondent has also pursued grievances for Bigham as a member and a nonmember.

Jack Buckman testified on behalf of the Respondent. Buckman is the Respondent's treasurer and it was he who asked Gibson if the Respondent could be reimbursed by Bigham for legal fees. Buckman credibly testified that Gibson's only answer was that he would have to check on that. Buckman's testimony corroborates Gibson's testimony and Gibson's replies are consistent with that of an individual who had no experience with unfair labor practice proceedings. I find no reason not to fully credit the testimony of Gibson and Buckman.

Based on the foregoing credibility determinations and the record as a whole, I find that the Respondent, the National Association of Letter Carriers, Branch 410, did not violate Section 8(b)(1)(A) of the Act as alleged in the complaint. Accordingly, I recommend that the complaint be dismissed.

CONCLUSIONS OF LAW

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- 1. The Respondent, the National Association of Letter Carriers, Branch 410, is a labor organization within the meaning of Section 2(5) of the Act.
- 2. The Respondent is subject to the National Labor Relations Board's jurisdiction pursuant to Section 1209 of the Postal Reorganization Act.
 - 3. The Respondent did not violate the National Labor Relations Act in any manner alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The compl	aint is c	lismissed.
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5	Dated, Washington, D.C.	August 17, 2006	
10			John T. Clark Administrative Law Judge
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